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October Term, 1994

ROBERT L. SCHULZ, JOHN SALVADOR, JR., GILBERT O. BOEHM, CHARLES D. BURGE, PHD., LELAND D. RYAN, SUZAN DIANE LA DUE, DOUGLAS FREDERICK WATSON, RICHARD ALLEN BERRY, JOHN B. SIBLEY, JR., CLAUDE F. SPROWLS, GARY L. WILLIAMS, ANDREA VECCHIO, STEPHEN LANDE, ERICK FRENKE, TAI AGUIRRE, EDWARD THOMAS, NICHOLAS J. SELVAGGIO, GAETANO V. CRUCIANI and EMANUEL A. CATANUTO,

Petitioners,

THE STATE OF NEW YORK, MARIO M. CUOMO, GOVERNOR; THE NEW YORK STATE LEGISLATURE, RALPH MARINO, SENATE PRESIDENT PRO-TEM, SAUL WEPRIN, SPEAKER OF THE ASSEMBLY; THE OFFICE OF THE STATE COMPTROLLER, H. CARL MC CALL, COMPTROLLER; THE OFFICE OF THE DIVISION OF THE BUDGET, PATRICK J. BULGARO, DIRECTOR; THE METROPOLITAN TRANSPORTATION AUTHORITY, ROBERT R. KILEY, CHAIRMAN; THE NEW YORK STATE THRUWAY AUTHORITY, PETER TUFO, CHAIRMAN,

Respondents.

REPLY BRIEF TO BRIEF IN OPPOSITION

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PETITIONERS HAVE A LEGITIMATE CLAIM TO THEIR MONEY PROPERTY WHICH STEMS FROM THE NEW YORK CONSTITUTION.

"Property interests are not created by the [federal] constitution; rather they are created, and their dimensions are defined by existing rules or understandings that stem from an independent source such as a state law -- rules or understandings that secure certain benefits and that support claims of entitlements to those benefits." Board of Regents v. Roth, 408 US 564, 577 (1972).

Petitioners' right to their money property stems from the New York Constitution which guarantees petitioners a right to live a life free of a taking of their money property by the State in ways that are expressly forbidden, and a further right to petition the government for a redress of grievances suffered because of the State's violation of those money-taking prohibitions.

It is essential to the orderly pursuit of happiness that petitioners be able to keep from the State as much of their earnings as is legally possible.

The New York Constitution expressly forbids the State from taking petitioners' money (through statewide taxes and fees) for the purpose of paying principal of and interest on any debt "contracted by or in behalf of the State", without the consent of the governed (see article VII, section 11), or of paying principal of or interest on any debt issued by any of the State's public corporations (See article X, Section 5). The New York Constitution goes so far, in protecting petitioners' money property, as to forbid the State from putting petitioners' money property at risk of being used to pay principal of or interest on any debt issued by any of the State's public corporations by expressly forbidding the State from giving or lending its credit to or in and of any of the State's public corporations (See Article VII, Section 8).

The Bill of Rights of the New York Constitution further secures petitioners' interest in their money property by expressly guaranteeing petitioners a fundamental right to petition the judiciary for a redress of grievances if and when the State Legislature and Executive branches violate said prohibitions (See Article I, Section 9.1) and by expressly forbidding the State from taking petitioners' money property without constitutional due process (See Article I, Sections 6 and 7).

Petitioners have a legitimate claim of entitlement to their money property. That claim of entitlement is grounded in the New York Constitution which defines purposes for and ways in which our money may not be taken from us by the State, and our right to bring government officials before judiciary if they violate those restrictions.

To determine whether due process requirements apply, courts may not look to the "weight" but to the "nature" of the interest at stake to see if the interest is within the fourteenth amendment's protection of liberty and property.

In a constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.

THE JUDGMENT BY THE COURT OF APPEALS RESTS ON FEDERAL AND NON-FEDERAL GROUNDS; THE NON-FEDERAL GROUNDS ARE NOT INDEPENDENT OF THE FEDERAL GROUNDS

"Where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, the Supreme Court is without jurisdiction to renew if the non-federal ground is independent of the federal ground and adequate to support the judgment". Fox Film Corp. v. Muller, 296 US 207 (1935).

The non-federal grounds of the judgment by the Court of Appeals are not all independent of the federal grounds.

And, the non-federal ground that may be independent of the federal ground is certainly not adequate to support the judgment.

The judgment by the New York Court of Appeals rests on federal grounds: plaintiffs were denied their first amendment right to petition their government for violating Article X, Section 5 and Article VII, Section 8 of the New York Constitution; plaintiffs' fifth and fourteenth amendment rights against a taking of their money and credit property were denied by a ruling that the rights of the State public corporations -- the issuers of the debt on behalf of the State -- to debt service payments from the State, and the rights of the bondholders themselves are "not legally enforceable rights" against the State and, therefore, the petitioners' money.

The judgment by the New York Court of Appeals also rests on non-federal (State) grounds: plaintiffs were denied their right, under Article I, Section 9.1 of the New York Constitution, to petition their government for violating Article X, Section 5 and Article VII, Section 8 of the New York Constitution; plaintiffs' rights under Article I, Sections 6 and 7 of the New York Constitution against a taking of their money and credit property for uses prohibited by Article VII, Section 11 of the New York Constitution were denied by a ruling that the rights of the State's public corporations -- the issuers of the debt in behalf of the State -- to debt-service payments from the State, and the rights of the bondholders themselves are "not legally enforceable rights" against the State and, therefore, the petitioners' money.

Obviously, the judgment's grounds denying plaintiffs their rights to petition (under Article I, Section 9.1 of the New York Constitution and under the First Amendment to the federal constitution) and their right against a taking of their property without constitutional due process (under Article I, Sections 6 and 7 of the New York Constitution and